

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN THE MATTER OF:)	
)	
BRANKO BORICICH,)	Bankruptcy No. 08 B 15248
Debtor,)	
)	
PHILLIP DRAGISIC,)	
Plaintiff)	Adversary No. 08 A 00728
v.)	
BRANKO BORICICH,)	
Defendant)	

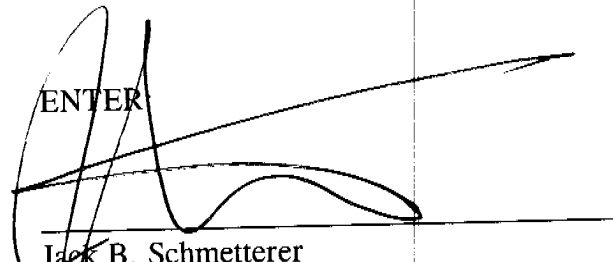
**MEMORANDUM OPINION ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT ON COUNTS I, II, AND III**

Phillip Dragisic, the plaintiff in this Adversary proceeding, has moved for summary judgment against the defendant and debtor, Branko Boricich. Dragisic relies entirely upon the entry of a default order against Boricich in case number 04-cv-6616 before the United States District Court for the Northern District of Illinois. He argues that mere entry of default order provides the basis for collateral estoppel effect as to all of his allegations in that case. However, Boricich filed for bankruptcy before Drgisic could proceed beyond entry of the default order, and no judgment was ever entered against Boricich.

Under the Federal Rules of Civil Procedure, a default order and a default judgment are not the same. A default order may be entered when a defendant fails to plead or otherwise defend. Fed. R. Civ. P. 55(a). The plaintiff must then affirmatively seek entry of a judgment. Fed. R. Civ. P. 55(b). Whether or not a default judgment may have preclusive effect need not be decided here. Mere entry of a default does not because it "does not of itself determine rights." *United States v. Borchardt*, 470 F.2d 257, 260 (7th Circ. 1972); *see also United States v. Hansen*, 795

F.2d 35, 37 (7th Cir. 1986) (an entry of default is "an intermediate, ministerial, nonjudicial, virtually meaningless docket entry"); 10A Charles Alan Wright et al., *Federal Practice and Procedure* § 2682 (3d ed. 1998 ("[T]here is no estoppel by judgment until the judgment by default has been entered.")).

Because there was no default judgment in the underlying civil litigation by Dragisic against Boricich, the allegations in that case cannot be given preclusive effect. Therefore, Dragisic's Motion for Summary Judgment on Counts I, II, and III will be denied by separate order.

ENTER


Jack B. Schmetterer
United States Bankruptcy Judge

Dated and entered this 22nd day of January 2010.